



November 8, 2006

Mr. Bruce Wolfe, Executive Officer
California Regional Water Quality Control Board
San Francisco Bay Region
1515 Clay Street, Suite 500
Oakland, CA 94612

Subject: Comments on Draft Stormwater Municipal Regional Permit (MRP)

Dear Mr. Wolfe:

Thank you for providing the City of Livermore staff this opportunity to comment on the Regional Water Quality Control Board's "working draft" (version dated Oct. 16, 2006) of the Municipal Regional Permit.

As you are aware, the Alameda Countywide Clean Water Program, its member agencies, and other Bay Area Stormwater Programs have dedicated significant time and staff resources over the last two years working with Regional Board staff to develop a Municipal Regional Permit. One of the primary goals of this undertaking was to develop a draft permit that resulted in a *coordinated and effective*, "region-wide" approach towards the implementation of urban runoff pollution controls throughout the San Francisco Bay Area. The current draft permit under review falls drastically short in achieving this goal. It appears to be overly prescriptive in many areas and requires a large number of written plans, databases, and reports that seem to offer little or no benefit to improving water quality. More importantly, if adopted in its current form, the draft permit is likely to cause successful Cleanwater Programs, such as the ACCWP, to be less effective and innovative in improving water quality due to the addition of burdensome administrative requirements that could significantly increase costs to these municipalities.

Livermore staff has reviewed the "working draft" of the Municipal Regional Permit and has the following comments:

1. In general terms, the MRP is far too prescriptive in nature. It does not acknowledge that differences exist between municipalities, nor does it provide permittees the opportunity to implement unique and effective stormwater programs. Instead, it mandates a "one-size fits all approach". The entire Municipal Maintenance section is extremely detailed and prescriptive. For example, it specifically addresses each potential type of discharge, requiring municipalities to adopt specific plans and provide specific related training to staff, when this topic could be more effectively addressed

by a discussion of the general prohibition of non stormwater discharges consistent with the exempt and conditionally exempt discharges established in prior permits.

The Municipal Maintenance section also establishes some unrealistic and unnecessary requirements. For example, permittees would be required to monitor dry weather flows in conveyance facilities for specific pollutants and to evaluate the possibility of routing such discharges to the sanitary sewer. While this effort might collect interesting data, what limits or criteria would agencies apply to evaluate the data? And how would the sampling distinguish between naturally-occurring pollutant sources such as erosion from undeveloped land and more controllable sources such as runoff from commercial/industrial facilities?

This requirement also fails to recognize the fact that most Publicly Owned Treatment Works (POTWs) were not designed and constructed with sufficient excess dry weather flow capacity to accept these types of discharges. Furthermore, even if sufficient capacity is available by taking advantage of unused wet-weather capacity during dry periods, the question of cost remains an issue, since most treatment plants were constructed with development fees and require significant sewer connection charges. On-going operating costs, or a "sewer bill" of some type, would also need to be assessed to these projects to maintain rate-payer equity. Due to these issues, the requirement to sample and evaluate diversion of dry weather flows should be removed from the draft permit.

Also, the permit suggests considering dry weather diversions to POTWs as a method to address potential mercury sources. Given that the POTWs were assessed a relatively restrictive, performance-based mass-load allocation during the mercury TMDL process, it seems highly unlikely or feasible that the POTWs would be willing or able to accept discharges thought to have any significant mercury loading.

In general, we feel strongly that the concept of dry-weather diversion is a viable strategy only in very limited situations, and then only to solve targeted problems such as beach closures caused by elevated coliform concentrations. Therefore, the dry weather diversion concept should be eliminated from the draft MRP since it's not a viable solution for most agencies.

The larger issue of dry weather flows might be more effectively addressed by focusing on water conservation and limiting irrigation runoff to reduce the source of controllable dry weather flows.

2. In the New Development (C.3) section, the permit requires municipalities to create and maintain several databases, including one to track impervious surface information. It does not appear that the collection and maintenance of such data provides any direct benefit, especially in the area of water quality improvement. As part of a previous project, the City of Livermore worked with Regional Board staff and

collected impervious surface data from New Development projects. An analysis of this data demonstrated that over 97% of the projects developed in Livermore would already be captured by the existing requirements. Despite this fact, the new permit would require City staff to eventually lower the threshold project size down to 5,000 sq. ft., and would even require staff to track project data down to the 1,000 sq. ft. size. This level of effort does not seem warranted to capture the remaining less than 3% of projects.

The City of Livermore along with other East-County municipalities met with Regional Board staff and discussed this issue in detail this summer; however, it appears a rational interpretation of the data collected and analyzed did not prevail when establishing the specific project sizes included in the MRP. Furthermore, the reduction in project size serves to add more restrictive development requirements without sufficient evaluation of the effectiveness of the current requirements being implemented. Moving forward with more stringent development controls without evaluating the current efforts seems short-sighted and fails to incorporate lessons learned from current and past permits.

It is hoped that Board staff can develop language that acknowledges and responds to the unique development patterns in different jurisdictions. Ideally, the permit should allow sufficient flexibility in the requirements to capture a reasonable percentage of the development projects instead of relying on a "one size fits all" approach that requires agency staff to spend significant additional resources tracking irrelevant information on the last 2-3% of projects.

3. Overall, the MRP seems to create some rather onerous additional reporting requirements that will inevitably result in additional costs to municipalities without any clear water quality benefits. It does so at a time when many agencies are already struggling to fund their current levels of stormwater program effort due to the requirements of Prop 218 to have any increase in revenue approved by a reluctant electorate that is often unlikely to support even the most reasonable fee increases.

As the Regional Board continues to place more emphasis on requiring Permittees to engage in reporting-related activities that are geared toward evaluating and demonstrating program effectiveness, many municipalities will face the overwhelming burden of utilizing existing staff time and resources to perform these additional "accounting and record keeping" oriented tasks. The additional staff time and resources that must be shifted towards these measurement and data gathering-related tasks will result in a reduction in time spent actually performing the activities themselves, which will have a direct impact on efforts to improve water quality. Evaluating and measuring effectiveness may have value, however, not at the expense of performing the actual activities, such as the inspection of commercial and industrial facilities that have the real, direct impact on water quality.

Livermore staff recommends that Regional Board staff carefully consider and evaluate each new reporting, data collection, or program evaluation task required in the draft-MRP to ensure that they are actually contributing in some way to improved water quality, or are essential to effectively measure compliance with the permit. This evaluation should be made in light of the reality that most agencies will not be able to add staff to meet new permit requirements, and will at best only reallocate resources. If Board staff determines that all of the new reporting, data-collection, and effectiveness measurement tasks are in fact essential, then please also identify the activities that are currently being conducted by the agencies that should be eliminated to provide staff-time for these new tasks.

4. In drafting the MRP, the Regional Board staff established workgroups for each major section of the permit. Board staff included representatives from municipal Cleanwater Programs, BASMAA (Bay Area Stormwater Management Agencies Association), as well as representative from the environmental community, or “non-governmental organizations (NGOs) as part of these work groups. There appear to be distinct differences in work products produced by workgroups with and without active NGO participation.

While Livermore staff understands the need for a collaborative process involving all stakeholders to develop the MRP, it is also essential to focus the permit requirements on those activities that directly benefit stormwater quality and that build on lessons learned from previous permits. Including the NGO's at an early point in the process is commendable, however it is incumbent on Board staff to carefully evaluate the comments from all stakeholders, including the dischargers, when drafting the MRP if the original goals of having a “consistent and effective” permit are to be met. It seems that many of the suggestions provided by BACWA and the municipal staff during the workgroup process were overlooked in favor of requirements inspired by NGO comments.

Hopefully the Board staff will consider the excellent history of proactive leadership and compliance by BASMAA agencies, and specifically the ACCWP when further evaluating the contradictory comments on potential MRP requirements. The comments by the dischargers do not represent an attempt to remove any legitimate or cost-effective activities that will have measurable impacts on water quality. Instead, the comments have consistently been intended to develop a permit that effectively controls and reduces stormwater pollution, and that can realistically be implemented by municipalities.

As a whole, the municipal stormwater agencies have clearly demonstrated their commitment to stormwater management and a willingness to try new solutions where appropriate. Therefore, the recent and increasingly-popular view that all “discharger” comments are somehow suspect and that collaboration with the dischargers should be avoided during the permitting process is simply not warranted in the case of

stormwater. The plain fact is that most of the collective knowledge of stormwater management developed in the Bay Area, as well as the majority of the best management practices (BMPs) currently in use in the area were conceived, developed, and/or implemented BY the dischargers. Not by the NGO's. Not by the Board staff. The agency staff and consulting firms that have been working on stormwater over the last 15 years have been the ones that truly believe in stormwater management enough to solve the tough problems and develop workable BMPs to begin to address stormwater pollution. As such, we respectfully suggest that it is important that Board staff consider the expertise of the dischargers when evaluating comments regarding the efficacy or practicality of proposed requirements.

The Bay Area Municipal Stormwater Management Agencies Association (BASMAA) submitted a proposed draft permit to the Water Board on September 22, 2006 that reflects countless hours spent working on the development of the MRP during the workgroup process. The document is consistent in content and format and is based upon the tables developed by the technical work groups. It provides for streamlined reporting, and incorporates an increased level of performance across all components on the program; with particular emphasis on the pollutants of concern, which we believe should be the priority and focus for this round of permitting. Based on this approach, it seems much more likely that the BASMAA document will provide the potential for real advancements in water quality protection and improvement than will the draft MRP. For these reasons, we believe the BASMAA document should be the basis for the ongoing permit negotiations.

In summary, the draft MRP includes a great deal of new and/or significantly expanded administrative requirements that will result in substantial expenditures of public resources without any clear or demonstrable water quality benefits. Also, the permit seems overly prescriptive in many areas and fails to recognize and provide for tailoring to address the differences between agencies or geographical locations. Due to limited resources, the more prescriptive and detailed the permit becomes, the less opportunity there is for agencies to be creative and proactive in developing solutions. Stormwater management in the Bay Area has benefited immeasurably from the flexibility and creativity of agency staff to try new things and to go literally beyond compliance with the permit in selected areas.

If the Board adopts an overly-prescriptive MRP, loaded with non-essential reporting and data collection activities, the agencies may indeed find a way to comply as they always have. However, much, if not all, of the "extra" work above and beyond simple compliance; all of the innovation and expansion seen over the last 15 years will also likely come to a stop. This will happen partially because of the increased demands on staff time. But it will also happen because a prescriptive, "one size fits all" approach eliminates the incentive for agencies or programs to go *beyond* basic compliance in a particular program component, since the permit does not allow a subsequent, balanced reduction of effort in another area that may be less critical to that agency or program. And basic compliance

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with permit requirements alone, without the flexible experimentation, innovation, and development of new solutions, will not do a thing to advance stormwater management, even when basic compliance is exhaustively documented and reported in an elegant database.

Sincerely,

A handwritten signature in cursive script, appearing to read "Darren Greenwood".

Darren Greenwood
Water Resources Manager

Cc: Dan McIntyre, Director of Public Works
Jim Scanlin, ACCWP
Geoff Brosseau, BASMAA